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SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 780789

WINFIELD SCHINDEL, JR.

Appellant

v.

COMMONWEALTH OF VIRGINIA

Appellee

APPENDIX

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V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

September 19, 1977

COMMONWEALTH OF VIRGINIA	)	
	)	INDICTMENT FOR POSSESSION OF A
vs.	)	CONTROLLED DRUG WITH INTENT TO
	)	DISTRIBUTE
WINFIELD SCHINDEL	)	

The Grand Jurors of the Commonwealth of Virginia, in and for the body of the County of Fairfax, and now attending the said Court at its September Term, 1977 charges that: On or about the 12th day of May, 1977 in the County of Fairfax, Winfield Schindel did unlawfully and feloniously, knowingly or intentionally possess with intent to distribute a controlled drug, to-wit: dilaudid.

Va. Code §18.2-248

A True Bill ✓

No True Bill_____

F O R E M A N

Witnesses subpoenaed, sworn and available to testify before the Grand Jury:

Inv. Morgan, Fairfax County Police Dept.

1 A. I initiated the contact with Mr. Schindel.

2 Q Could you tell the ladies and gentlemen of the

3 Jury how you went about doing that.

4 A. I approached Mr. Schindel in a friendly manner and

5 I asked him if he knew where I could purchase any

6 particular type drugs, heroin or dilaudid.

7 Q Okay. Mr. Weston, what was your intention in

8 approaching Mr. Schindel on that date?

9 A. My intentions were if I could purchase any heroin

10 or dilaudid to help my case out, seeing as I was in quite a

11 bit of trouble and I was told if I did cooperate it could

12 possibly help me out in my case.

13 Q What, if anything, did Mr. Schindel say in

14 response to that?

15 A. He said yes, he knew where he could get some

16 dilaudid. And he stated that there was a doctor in the

17 Courthouse that he could give a certain amount of money to

18 and get a prescription.

19 Q After conversation what happened?

20 A. I told him to go ahead. And I talked with my

21 attorney; then I went in and contacted Investigator Morgan.

22 Q Was there any mention of money at that time?

23 A. There was mention of Mr. Schindel told me he'd

1 need a hundred dollars to get the prescription from the
2 doctor in the Courthouse.
3 Q What, if any, understanding was there between you
4 and Mr. Schindel in regard to the one hundred dollars?
5 A. Basically that the prescription would be mine.
6 Is that what you're asking?
7 Q I'm sorry. I didn't understand.
8 A. I thought I would be purchasing the whole
9 prescription from him if I was paying for it.
10 Q And what was the expectation in so far as who was
11 paying for it?
12 A. I thought I was paying for it because it came out
13 of my pocket.
14 Q Was anything else mentioned during that particular
15 conversation?
16 A. No. Not other than I told him I would have to get
17 the money, then I'd be back.
18 Q Did the conversation terminate at that time?
19 A. Pretty much so.
20 Q What, if anything, did you do thereafter?
21 A. I contacted Investigator Morgan through my attorney,
22 Jerry Phillips.
23 Q Approximately how long was it from the end of the

1 initial conversation with Mr. Schindel until the time when
2 you contacted or talked to --
3 A. I would say fifteen minutes to half an hour.
4 Q. Did there come a time when you met with
5 Investigator Morgan at his office.
6 A. Yes. I did.
7 Q. And what, if anything, took place in that office
8 in so far as your participation and your conversation was
9 concerned?
10 A. I spoke with Investigator Morgan and told him I
11 could possibly help him out, thinking it would help my case
12 out. I told him what had happened at the Courthouse. He
13 instructed me --
14 Q. Don't testify as to what Investigator Morgan
15 instructed you.
16 Did you have a conversation with Investigator
17 Morgan at that time?
18 A. Yes. I did.
19 Q. Did there come a time when you gave Investigator
20 Morgan certain monies that you had?
21 A. Yes. I did.
22 Q. What, if anything, did Investigator Morgan do with
23 that money?

1 A. He told me --

2 Q. Don't testify to what he said.

3 How much money did you give Investigator Morgan?

4 A. Five twenty dollars bills.

5 Q. Did there come a time when that money was returned

6 to you?

7 A. Yes, sir.

8 Q. What was your understanding at that point as to what

9 you were to do?

10 A. I was supposed to go back to the Courthouse with

11 Investigator Morgan and another investigator and give the

12 money to Mr. Schindel in the foyer of the Courthouse.

13 Q. Was there anything further to your understanding

14 of what you were to do?

15 A. After that I -- After Mr. Schindel had gotten the

16 prescription I was instructed to go the drug store at the

17 University Mall at Route 236 and Main Street.

18 Q. Did you have anything else to add?

19 A. I was just going to say it's not Main Street. I

20 guess it's Route 237.

21 Q. All right. Did there come a time when you left

22 Investigator Morgan's Office?

23 A. Yes. There was.

1 Q What happened after you left?

2 A. I proceeded to the Courthouse and handed Mr.

3 Schindel the money.

4 Q Where did you hand him the money?

5 A. In the foyer, the lower foyer entrance hallway.

6 Q How much money did you hand him?

7 A. One hundred dollars.

8 Q Was it the same money you had initially given

9 Investigator Morgan?

10 A. Yes. It was.

11 Q What, if anything, did Mr. Schindel do at that

12 time?

13 A. He proceeded to go outside. He said he was going

14 to get the prescription from a Dr. Salama.

15 Q Had you seen this Dr. Salama as of yet?

16 A. He showed me Dr. Salama earlier when I had my

17 earlier conversation, initiated the conversation with him

18 earlier that morning.

19 Q What, if anything, did Mr. Schindel tell you about

20 your contact with Dr. Salama?

21 A. He told me I shouldn't act like I recognized Dr.

22 Salama.

23 Q Just a bit of retrospect. How much time had

1 elapsed between the time you initially talked to Mr.
2 Schindel and the time you handed Mr. Schindel the money, if
3 you can recall?
4 A. I would say approximately fifteen minutes to half
5 an hour.
6 Q. At the time you handed Mr. Schindel the money did
7 you see Investigator Guy Morgan anywhere in the area, or
8 shortly before you handed him the money?
9 A. I can't say I saw either one of the investigators
10 when I handed him the money.
11 Q. Were you aware of whether or not they were in the
12 Courthouse at the time you handed him the money?
13 A. At the time they were supposed to be in the Court-
14 house watching me.
15 Q. What happened then?
16 A. Mr. Schindel came back and he said he had the
17 prescription.
18 Q. Did you see Mr. Schindel leave the Courthouse after
19 you gave him the money?
20 A. Yes.
21 Q. Did you see whether or not he left with anyone?
22 A. No. I didn't.
23 Q. All right. And then what happened after Mr.

1 Schindel told you that?

2 A. He came back with a prescription and we proceeded

3 to go to the University Drug Fair and on our way there Mr.

4 Schindel stated that he'd rather go to a different drug

5 store, a Rexall in Vienna, I believe. So, we proceeded there.

6 Q. Let me stop you just for a moment.

7 The time Mr. Schindel told you he had the

8 prescription did you actually see the prescription?

9 A. Yes. I did.

10 Q. What did it say on it, generally speaking?

11 A. Well --

12 Q. Whose prescription was it?

13 A. It was made out to Mr. Schindel, I believe.

14 MR. TRAVOSTINO: I'll object to what the

15 prescription says, Your Honor. The prescription itself is

16 available to the Commonwealth. That would be the best

17 evidence.

18 MR. GRAHAM: Very well, Your Honor. I will

19 withdraw the question.

20 THE COURT: The question is withdrawn.

21 BY MR. GRAHAM:

22 Q. Let me ask you this: Was there a time lag or time

23 delay between the time Mr. Schindel informed you he had the

1 prescription and the time you both left the Courthouse?

2 A. Yes. There was.

3 Q. Approximately how long was that?

4 A. Five to ten minutes.

5 Q. When you left the Courthouse did you use a vehicle?

6 A. Yes. We did.

7 Q. Whose vehicle did you use?

8 A. It was mine.

9 Q. You stated you both proceeded to the drug store on

10 Main Street. What happened there?

11 A. Mr. Schindel stated he would much rather go to

12 another drug store, which I mentioned the Rexall Liggett's

13 Drug Store in Vienna.

14 Q. Did there come a time when you proceeded to

15 Liggett's Drug Store in Vienna?

16 A. We proceeded there immediately after we discovered--

17 I discovered he didn't want to go to the Drug Fair on

18 University.

19 Q. Did Mr. Schindel indicate why he did not want to

20 go to that drug store?

21 A. He just -- I think it was because he thought he

22 could get the prescription there at the drug store in Vienna

23 easier than he could at the drug store because he didn't feel

1 the Drug Fair would have the narcotic on hand.

2 Q Mr. Weston, at this point what was your understanding

3 as to the negotiation or the deal that was taking place

4 between you and Mr. Schindel? What was your expectation?

5 A My expectations were that if going through this

6 whole thing that it would help my case out and I possibly

7 wouldn't go to jail myself. That is why I cooperated.

8 Q I'm talking about your expectations so far as the

9 deal between you and Mr. Schindel was concerned.

10 A I see. I was expecting I would get all the

11 dilaudid that the prescription was written out for.

12 Q What, if anything, was Mr. Schindel to get for this

13 transaction?

14 A A few pills, dilaudids.

15 Q Did there come a time when you arrived at the drug

16 store in Vienna?

17 A Yes. I did.

18 Q What happened there, sir?

19 A We went in the drug store. The pharmacist filled the

20 prescription. We left and returned to the car.

21 Q Who tendered the prescription to the pharmacist?

22 A I believe Mr. Schindel did but I didn't see him.

23 Q Were you present at the time in the vicinity?

1 A. I was in the store but I wasn't at the pharmacy
2 counter.
3 Q. Approximately how much time elapsed between the
4 time you entered and the time you left Liggett's Pharmacy?
5 A. I would say five minutes.
6 Q. How far was your car parked from the entrance to
7 Liggett's Pharmacy?
8 A. Fifty feet, maybe, in the parking lot.
9 Q. What happened after you left the pharmacy, you and
10 Mr. Schindel?
11 A. After we left the pharmacy I was supposed to walk
12 out and give Investigator Morgan a signal. We went to the
13 car; got in the front seat. At the time I tried to get the
14 prescription from Mr. Schindel and that is when I discovered,
15 I guess, he was going to give me a few pills and keep most of
16 the pills for himself. We got in the car and he started to
17 show me the pills and Investigator Morgan came to the
18 passenger side of the car and indicated he was placing him
19 under arrest.
20 Q. How did you receive the understanding that contrary
21 to your expectations you were only going to get a few pills
22 and Mr. Schindel was supposed to get the majority?
23 A. Well, I had to ask him for the prescription on our

1 way out of the store and at the time he seemed a little
2 reluctant to give me the prescription. It seemed to me I was
3 only going to get three or four pills, what would have been
4 street value of approximately a hundred dollars.
5 Q Of three or four pills?
6 A. Right.
7 Q What happened then?
8 A. Like I said, we got in the front seat of the car
9 and Mr. Schindel finally showed me the pills and as I was
10 starting to look at them and take them into my hand
11 Investigator Morgan came to the passenger side of the car.
12 Q On which side of the car was Mr. Schindel sitting?
13 A. On the passenger side.
14 Q What happened then?
15 A. He placed Mr. Schindel under arrest.
16 Q Do you recall how much filling the prescription
17 cost at Liggett's Drug Store?
18 A. No. I don't.
19 Q Do you recall who paid for the prescription being
20 filled?
21 A. I think I paid for it but I don't recall at this
22 time.
23 Q Prior to giving Mr. Schindel one hundred dollars

1 in the Courthouse had you owed Mr. Schindel any money?

2 A. No. I didn't.

3 Q. Have you ever had any financial dealings with Mr.

4 Schindel, lending money or so forth?

5 A. No.

6 Q. Was there ever anything between you and Mr. Schindel

7 which might indicate in his mind you owed him some money?

8 A. No. There wasn't.

9 Q. Do you know whether or not Liggett's Drug Store is

10 located in Fairfax County?

11 A. It's in the Town of Vienna.

12 Q. Is the person who you refer to as Mr. Schindel

13 throughout your testimony is he in Court today?

14 A. Yes. He is.

15 Q. Would you point him out for the Court please.

16 A. Right there (Indicating), the Defendant.

17 Q. When was the first time the Police Department of

18 Fairfax County knew you were negotiating a deal for dilaudid

19 with Mr. Schindel?

20 MR. TRAVOSTINO: I object to that question, Your

21 Honor.

22 THE COURT: I sustain the objection. You can ask

23 him when is the first time he had contact with the Police

1 Department.

2 MR. GRAHAM: Yes, sir.

3 BY MR. GRAHAM:

4 Q When was the first time you advised Fairfax County

5 Police Department you were negotiating a deal with Mr. Schindel?

6 A The same day.

7 Q When in relationship to your approaching Mr.

8 Schindel and asking him if he could sell you some drugs?

9 A The same day.

10 Q When in relationship, that is, before or after,

11 when did you advise Fairfax County?

12 A After I talked to Mr. Schindel.

13 Q Was there a time when Mr. Schindel told you he was

14 not going to give you any of the drugs?

15 A No. There wasn't.

16 Q Was there ever a time you did not expect to receive

17 some drugs from Mr. Schindel?

18 A Well, after I'd gotten the prescription I expected

19 to receive the drugs; I expected to receive the major part of

20 the drugs that were in the prescription, seeing as I'd given

21 him the hundred dollars.

22 Q Can you tell the ladies and gentlemen of the Jury

23 what, if anything else, aside from the hundred dollars was the

1 foundation for your expectation you would receive drugs from
2 Mr. Schindel?
3 A. I paid for them and I felt basically they were mine
4 except the doctor had written the prescription to Mr. Schindel.
5 MR. GRAHAM: No further questions at this time.
6 THE COURT: Cross examine.
7 CROSS EXAMINATION
8 BY MR. TRAVOSTINO:
9 Q. Mr. Weston, you were not friends with Mr. Schindel
10 prior to that alleged transaction?
11 A. We were acquaintances. I wouldn't say we were
12 friends.
13 Q. You wouldn't do him a favor and he wouldn't do you
14 a favor?
15 A. I don't think so.
16 Q. Isn't it a fact on May 12, 1977 you approached Mr.
17 Murdock Edibar, who was standing with Mr. Schindel, first?
18 A. I don't recall if it was Mr. Schindel or Mr.
19 Edibar.
20 Q. Did you approach Mr. Edibar and Mr. William
21 Highland and ask them if they could sell you some heroin at
22 that time?
23 A. Right. I asked both of them also.

1 Q You asked them first? That's who you first went
2 to to buy heroin, is that right?
3 A. I don't recall which one I asked first that day.
4 Q At that point Mr. Schindel told you he needed to
5 borrow some money from you, isn't that right?
6 A. He wanted to know if he could borrow one hundred
7 dollars for the prescription.
8 Q He wanted to borrow it to pay his doctor bill,
9 isn't that correct?
10 A. Right. Well, then he told me later it was indeed
11 for the prescription because the doctor was in the Courthouse
12 at the same time and he could get the prescription for a
13 hundred dollars.
14 Q He told you later. Was that after you'd went down
15 and talked to Officer Morgan?
16 A. No.
17 Q How much later?
18 A. He told me when I first had the conversation with
19 him before I went down to Investigator Morgan's Office, that,
20 as I recall, Mr. Schindel stated he did have a doctor bill and
21 then he told me the doctor was in the Courthouse and the
22 hundred or the money he needed for the doctor was actually for
23 the prescription.

1 Q He needed the prescription, isn't that right?
2 A. Right.
3 Q He needed for his own physical --
4 A. Right.
5 Q -- problems, isn't that correct?
6 A. That is correct.
7 Q So, when you gave him the hundred dollars you were
8 just giving him the money so he could pay his doctor so at
9 that point so he could get his prescription for his own health
10 problems?
11 A. Right. But I thought at the time it would be for
12 my benefit.
13 Q Mr. Schindel didn't tell you that. He told you --
14 A. He didn't have any type of conversation --
15 Q So, you made that all up when you went and told
16 Officer Morgan?
17 A. What?
18 Q You made it up he was going to sell you this
19 prescription, drugs?
20 A. I didn't make it up. I didn't make up the fact that
21 he could get a prescription from a certain doctor in the
22 Courthouse. That is all I stated.
23 Q That is all you told Officer Morgan?

1 A. Right.

2 Q. You didn't tell him it was for his own health

3 benefits?

4 A. No. I didn't.

5 Q. And you didn't tell him that the hundred dollars

6 was for Mr. Schindel to pay his doctor bill?

7 A. No. At that time I was trying to cooperate with

8 Investigator Morgan to help my own case out. I was --

9 Q. You misled Officer Morgan --

10 MR. GRAHAM: Your Honor, I ask the witness be

11 allowed to finish his answer before counsel asks another

12 question.

13 THE COURT: Let the witness finish.

14 THE WITNESS: I gave this information to

15 Investigator Morgan because it seemed a bit illegal that he

16 gave a doctor a hundred dollars in the Courtroom, why not in

17 his office, and he gives you a prescription for dilaudids. I

18 didn't understand that whole --

19 BY MR. TRAVOSTINO:

20 Q. Did you explain to Officer Morgan that that --

21 A. I told him all the facts of what I witnessed for

22 myself in the Courthouse and I asked him if he could do

23 anything with it so as to help my own case out, if it would

1 help me.

2 Q Did you tell Officer Morgan the hundred dollars

3 was for Mr. Schindel to pay a delinquent doctor bill?

4 A. I told him I needed a hundred dollars to give Mr.

5 Schindel so he could give it to Dr. Salama.

6 Q You didn't tell Officer Morgan the entire story

7 then, did you? You left some things out because it would

8 benefit your case, if you left it out and made it look like

9 Mr. Schindel was a criminal, about to engage in criminal

10 activities, isn't that right?

11 A. I don't think I would have been involved in

12 leading Investigator Morgan to Mr. Schindel if it wasn't for

13 my own benefit.

14 Q So, the answer to that question is yes, you left

15 some important information out when you told Officer Morgan?

16 A. Well, not at the time. I didn't realize that was

17 the important information. I realized Mr. Schindel wanted a

18 prescription of dilaudid.

19 Q He wanted dilaudid not you?

20 A. No.

21 Q You testified on direct examination you were

22 supposed to get the dilaudid. Now you're saying he was

23 supposed to get the dilaudid.

1 A. At the time I felt when I gave the hundred dollars
2 I should get the major portion of the prescription.
3 Q. But you just testified you thought it was a loan
4 to Mr. Schindel. A loan means he was going to pay it back,
5 isn't that right?
6 A. I didn't think it was a loan. I thought at the
7 time, which me and myself and Mr. Schindel hadn't discussed
8 who was going to get most of the dilaudid.
9 Q. Didn't you testify on direct examination that you
10 expected to get the entire prescription and then later on
11 you said --
12 A. I expected to get almost --
13 Q. -- you said you were expecting all the dilaudid?
14 A. -- almost the entire amount of the prescription
15 except for a few pills I was going to give Mr. Schindel.
16 That was my understanding. I hadn't discussed that with Mr.
17 Schindel.
18 Q. You hadn't discussed that at all, who was going to
19 get the pills?
20 A. No. Who was supposed to get the major portion and
21 who was supposed to get a few and who was supposed to get the
22 other, what was left, what the distribution of the
23 prescription was to be after it was gotten.

1 Q You were to give Mr. Schindel five twenty dollars
2 bills in return for what you didn't know what you were going
3 to get?
4 A. I gave Mr. Schindel five twenty dollar bills under
5 the direction of Investigator Morgan.
6 Q You didn't know what you were supposed to get at
7 that point, is that what you're telling us?
8 A. I was strictly doing it --It was his ball game
9 after that. As long as he saw me give it to him in the
10 Courthouse -- I was left out.
11 Q And you didn't know what you were supposed to get
12 for those five twenty dollar bills?
13 A. He told me a prescription of dilaudids he was
14 supposed to get for a hundred dollars.
15 Q He was supposed to get. I'm talking about what
16 you were supposed to get.
17 A. No. We were not under any understanding at the
18 time, whether I was going to get the whole prescription or
19 give him some or he was going to get it and give it to me.
20 Q In other words, you weren't under impression you
21 were supposed to get any of the dilaudids, isn't that right?
22 A. Well, I imagine Mr. Schindel figured I wanted some
23 dilaudids if I was giving him a hundred dollars out of nowhere.

1 Q You just brought this expectation up because you
2 had the hundred dollars. Mr. Schindel never told you he was
3 going to give you any dilaudids, did he?
4 A. Not that I recall. I think basically it was an
5 understanding understood in the drug deal that, you know, he
6 would get some, I would get some; I thought I was going to get
7 the major portion.
8 Q He never told you that though, did he?
9 A. No. He didn't.
10 Q You brought that up in your own mind?
11 A. At the time, right. I brought it up in my own
12 mind. At the time though I thought the whole prescription
13 was going to be given to me and he would ask for a few. I
14 wasn't even interested in any dilaudids myself; I was
15 strictly doing it through cooperation with the Police
16 Department.
17 Q Is it possible there was a misunderstanding here,
18 that you didn't really realize that Mr. Schindel just wanted
19 a hundred dollars to pay the doctor bill?
20 A. There could have been.
21 Q Isn't it possible he wanted -- he intended to keep
22 the entire prescription for his own problems, physical
23 problems?

1 Q On this particular occasion?

2 A It was my own doing, right, that I went to

3 Investigator Morgan.

4 Q Did you talk to him about this case prior to

5 going to Mr. Schindel?

6 A No. I just saw Mr. Schindel the day in Court and

7 I asked my attorney, because he mentioned to me there was a

8 doctor in the Courthouse and he could get a prescription.

9 Q Isn't it a fact when you approached the three men,

10 Edibar, Highland and Schindel, in the Courthouse and asked

11 for the heroin you were refused? Is that correct? They

12 couldn't sell to you?

13 A They couldn't get any heroin at that time, no.

14 Q Mr. Schindel at that point asked to borrow a

15 hundred dollars and you refused him at that point, isn't that

16 correct? And left?

17 A Yes.

18 Q Isn't that correct?

19 A Yes.

20 Q And later on did you come back and say your traffic

21 fine was a hundred dollars less than you thought it would be

22 and therefore you had the hundred dollars to lend it to Mr.

23 Schindel?

1 A. Right.

2 Q. Isn't that correct?

3 A. I had a hundred dollars if the case was he was to

4 get the prescription.

5 Q. You just testified before it was for a loan?

6 A. We had two different discussions. Mr. Schindel

7 stated, he asked if he could borrow, which I declined; then I

8 was redirected --

9 Q. That is when you went back to Officer Morgan,

10 isn't it?

11 MR. GRAHAM: Objection, Your Honor. I'd like to

12 ask the witness be allowed to finish his answer before counsel

13 asks another question.

14 THE COURT: Sustained.

15 THE WITNESS: The second conversation he indicated

16 he could get the doctor -- the doctor was over there but not

17 to look over at the doctor or anything else -- that happened

18 to be the doctor that all three of those particular

19 individuals happened to be standing with -- He said, Don't

20 even look over there, that he could get the prescription, it

21 would cost him a hundred dollars.

22 BY MR. TRAVOSTINO:

23 Q. That was after you --

1 A. Well, I didn't know if it was for his bill or
2 what or how he was going to go about getting his prescription
3 except that he was under the impression I wanted dilaudids
4 and he went ahead and did it; I don't know what he did with
5 the hundred dollars. I was directed by Investigator Morgan
6 to give him a hundred dollars, which I did.
7 Q You didn't know what impression he was under at
8 that point, did you?
9 A. No. I didn't.
10 Q You didn't know whether --
11 A. I didn't know --
12 Q You didn't know whether he expected it to be a loan,
13 whether he expected to use the dilaudid himself, did you?
14 A. I think he realized that both of us were supposed
15 to get the dilaudids and probably myself more.
16 Q You came up with that idea yourself you testified
17 before?
18 A. Right. We were under no understanding as to who
19 was getting what.
20 Q You recall on August 23, 1977 speaking with me in
21 the foyer of this Courthouse?
22 A. Yes. I do remember.
23 Q You were supposed to testify at the preliminary

1 BY MR. TRAVOSTINO:

2 Q You never touched any of these pills, did you?

3 A. No. I didn't.

4 Q They were never passed to you. Is that correct?

5 A. No. They weren't.

6 Q When you asked for the pills didn't Mr. Schindel

7 act like, what are you talking about, why do you want these

8 pills, wasn't that his reaction?

9 A. He was hesitant, yes, sir.

10 Q How long -- Whose was it? It was your car,

11 wasn't it?

12 A. Yes. It was.

13 Q At the pharmacy.

14 A. Right.

15 Q Did Mr. Schindel have a car that day?

16 A. No. I don't think he did.

17 Q How long were you outside the pharmacy in the car

18 before Officer Morgan came up?

19 A. I would say two minutes, maybe, one to two minutes.

20 Q Did Mr. Schindel at that point have the time to

21 pass you those prescription pills?

22 A. I guess he did. Yes.

23 Q He did not pass them to you?

1 A. No.

2 Q. Were you trying to get them during that period of

3 time?

4 A. I was trying to talk to him to get the

5 prescription in my hand. Right. That is what I was

6 instructed to do, to get him to pass me the pills.

7 Q. You were trying to talk him into giving you the

8 pills at that point?

9 A. Yes.

10 Q. He wouldn't give them to you?

11 A. Well, he was a little hesitant as I said.

12 Q. You testified you were starting to take the pills

13 into your hand. That is not correct, is it? Mr. Schindel had

14 them in his hand, isn't that correct?

15 A. He was starting to pass me two or three pills. I

16 had my hand out and Investigator Morgan came to the passenger

17 side of the car.

18 Q. Isn't that somewhat inconsistent with your

19 statement this is a bad rap?

20 A. In some ways it is, yes, sir.

21 Q. Were you lying to me on August 23rd when you said

22 that or are you lying now when you say he was passing the pills?

23 A. No. Well, I thought he had passed me the pills.

1 It was under my understanding when I first went to
2 Investigator Morgan that they wanted Dr. Salama and that Mr.
3 Schindel was a go-between, if anything, and that is why I felt
4 it was a bad rap, because knowing Mr. Schindel as a street
5 acquaintance I realized he had probably did need the drug for
6 sickness.
7 Q At that time did you realize you were supposed to
8 give the signal, scratching your head for Officer Morgan?
9 A. I forgot about giving the signal.
10 Q You forgot about giving the signal?
11 A. Yes.
12 Q When did they tell you about the signal?
13 A. They told me several times when we went to his
14 office.
15 Q That same day, isn't that right?
16 A. Yes.
17 Q You forgot what signal you were supposed to give?
18 A. Yes. I did.
19 Q At what point was Mr. Schindel passing you the
20 drugs? Where was Officer Morgan at that point?
21 A. When I finally got Mr. Schindel to show me some of
22 the pills, whether he was passing them to me or not,
23 Investigator Morgan was on the passenger side of the car,

1 within the one to three minute span when we got back to the
2 car.
3 Q Where had he been prior to that time?
4 A. I don't know. I was inside the store then. I
5 walked out. I saw him walking over to the car. That is all.
6 Q You just said something that struck me. You said
7 Mr. Schindel had them in his hand. Before that you said --
8 and he was showing them to you in his hand. Before that you
9 said he was passing them to you. Which one was it? Was he
10 showing them to you or passing them to you?
11 A. Well, he had them in his hand and I had my hand
12 out but I never received them in my hand; so, I saw them in
13 his hand.
14 Q He was holding them in his hand in front of him?
15 A. I don't recall if it was in front of him or to the
16 side of him or in the process of handing them to me or whether
17 it was a process of handing them to me.
18 Q You don't know whether he was handing them to you?
19 You know you had your hand out but you don't know whether he
20 intended to hand them to you?
21 A. I didn't know what his intentions were.
22 Q When Mr. Schindel came back, when he was with Dr.
23 Salama, when he came back to you when you were going to go to

1 the drug store didn't you think at that point you were going
2 to get some drugs or something at that point? Didn't you ask
3 him what do you --
4 A. After he went to Dr. Salama I thought it was in the
5 investigator's hands. I was strictly instructed to drive him
6 to the drug store. I didn't necessarily want any of the drugs.
7 I didn't want any of the drugs.
8 Q Did you think at that point he had drugs? Did you
9 say to him at that point, What did you get?
10 A. I don't recall what I said to him. I think he said
11 he got the prescription or indicated he did have the
12 prescription and it was time to go to the drug store.
13 Q You weren't expecting anything at that point?
14 A. I wasn't expecting anything after I'd given him the
15 hundred dollars, whether he got the prescription or walked off
16 with it or did what.
17 Q I don't mean expecting it for your own use or
18 whatever the use was. Were you expecting anything when he
19 came back from Dr. --
20 A. We had no understanding who was supposed to get
21 what.
22 MR. TRAVOSTINO: That is all I have.
23 THE COURT: Redirect?

1 REDIRECT EXAMINATION

2 BY MR. GRAHAM:

3 Q Mr. Weston, are you telling the ladies and gentle-
4 men of the Jury you never expected to get any drugs from Mr.
5 Schindel?

6 A. I expected to get some but we had no understanding
7 as to who was supposed to get what amount of pills or how the
8 prescription was supposed to be split up.

9 Q Would you tell the ladies and gentlemen of the Jury
10 how you got the understanding you were supposed to get at
11 least some of the drugs?

12 A. I don't recall Mr. Schindel telling me he was
13 supposed to give me any but under my understanding I thought he
14 understood if I was giving him a hundred dollars I was
15 supposed to get a few of the pills, if not the major portion
16 of them.

17 Q There was no question -- Was there any question as
18 to whether or not the hundred dollars was a loan or in return
19 for some consideration, namely drugs? Was there any
20 question of whether or not the one hundred dollars --

21 A. He had asked me for a loan and I refused to give
22 him a loan; so then I came back after I'd spoken with my
23 attorney and I told him my fine was smaller and I could give

1 the one hundred dollars for the prescription, if that is what
2 it was for.
3 Q Was there a conversation with the Fairfax County
4 Police Department between the conversation of you and Mr.
5 Schindel regarding the loan and the conversation regarding the
6 hundred dollars in return for the prescription? Did the
7 Fairfax County Police Department become involved in the
8 matter between the time you discussed the loan and the time
9 you discussed the hundred dollars in return for the
10 prescription?
11 A. I don't recall. I don't recall whether I went to
12 Investigator Morgan after I got back to Mr. Schindel and
13 indicated I had the hundred dollars or whether I did after that
14 or inbetween the time I told him I didn't have the money to
15 loan to him.
16 Q Why did you accompany Mr. Schindel first to the
17 University Drug Store and then to Liggett's Drug Store? Why
18 did you drive your car?
19 A. I was instructed to do so by Investigator Morgan.
20 Q What was your intent in accompanying Mr. Schindel?
21 Do you know?
22 A. My intent was to strictly help myself out.
23 Q Not your ultimate intent, your immediate intent, Mr.

1 Weston.

2 A. My immediate intent was to take Mr. Schindel to

3 the drug store where the investigators were waiting.

4 Q. Why do you think the investigators were waiting?

5 A. At the time I was under the impression I was going

6 to get some of the pills and Mr. Schindel after I took him to

7 the drug store I was supposed to give a signal, scratch my

8 head to the investigators when I did have the pills in my

9 hand, but that never took place. That's when I went to the

10 drug store. But I felt at the time I was instructed that Dr.

11 Salama was the man they were more interested in and that Mr.

12 Schindel was strictly a go-between to get the Dr. Salama.

13 Q. During the course of your contact with Mr.

14 Schindel on this particular date what, if anything, did Mr.

15 Schindel ever say about what he was going to do with his

16 portion of the pills?

17 A. I don't recall whether he said he was going to do

18 anything with them.

19 Q. Was there any conversation regarding his going into

20 Washington --

21 MR. TRAVOSTINO: I object to that. It's a leading

22 question.

23 THE COURT: Sustained.

1 BY MR. GRAHAM:

2 Q Any conversation at all in regard to what Mr.
3 Schindel would do with the remaining portion of the pills?

4 A No. There wasn't. I don't recall what he told
5 me about -- I was't interested in what he was going to do with
6 his pills. I was strictly interested in if the whole thing
7 would go right and I would get it in my hand and help my case
8 out.

9 Q Now, subsequent to May 12th your case came to
10 trial, is that correct, your case for distribution of heroin?

11 A Yes. It did.

12 Q Was there any recommendation made by the
13 Commonwealth your sentence should be less than what it
14 ultimately was?

15 MR. TRAVOSTINO: I object, Your Honor. I don't
16 see the relevance.

17 MR. GRAHAM: Your Honor, the relevance is Mr.
18 Travostino has brought up the issue of what, if anything, Mr.
19 Weston got in return for his cooperation in this case. I
20 think Mr. Weston, after the door has been opened, should be
21 allowed to answer that question.

22 THE COURT: The Court would overrule the
23 objection.

1 THE WITNESS: The Commonwealth didn't make any
2 recommendation. It just said due to the fact I'd been in
3 trouble before I shouldn't have even been involved in that
4 case and he asked for time on my past record more than time
5 for my involvement in the case.
6 BY MR. GRAHAM:
7 Q To your knowledge was anything given to you in
8 return for your cooperation in this case --
9 A Not that I know of.
10 Q -- the Schindel case?
11 A Nothing was stated to me.
12 Q I believe you stated on cross examination you
13 thought this was a bad rap against Mr. Schindel. As I
14 recall your testimony, you said this was a bad rap because
15 you thought Dr. Salama was the main violator in this case?
16 A Yes.
17 Q Is that your basis for saying that?
18 A That is true.
19 Q Is that your only basis for your saying you think
20 this is a bad rap against Mr. Schindel because Mr. Schindel was
21 used in an attempt to get to Dr. Salama?
22 A Yes. That and whether the hundred dollars was
23 strictly for a bill he owed Dr. Salama or whether Dr. Salama

1 was given a hundred dollars for a prescription, that he paid
2 for his prescription a hundred dollars for his prescription.
3 Whether Mr. Schindel was sick or not, I had no knowledge of
4 either of these.
5 Q You made an unequivocal statement you thought the
6 charge should be made against Dr. Salama and not Mr. Schindel,
7 right, to Mr. Travostino?
8 A. I made that statement. I felt Dr. Salama should be
9 the one charged, if he's a doctor of medicine taking a
10 hundred dollars for -- from someone for a prescription, which
11 he couldn't legally give out unless Mr. Schindel was sick and
12 needed that prescription.
13 Q Was there any doubt in your mind that is what
14 happened?
15 MR. TRAVOSTINO: I object to that question,
16 Your Honor. I don't see how he could answer that.
17 MR. GRAHAM: He was asked that question by Mr.
18 Travostino on cross examination.
19 THE COURT: I don't think he was. There's no way
20 for this witness to testify the Defendant was sick or not
21 sick.
22 MR. GRAHAM: I believe that --
23 THE COURT: The Court will sustain the objection.

1 BY MR. GRAHAM:

2 Q I'll ask you one last time. Mr. Weston, was there
3 any question in your mind in return for your one hundred
4 dollars which you gave Mr. Schindel you were to get some of
5 the drug?

6 A. Well, I thought I was supposed to get. That was the
7 whole purpose of my giving the hundred dollars to Mr. Schindel,
8 that I would get some of the drug and that would be
9 witnessed Mr. Schindel did give me some of the drug and we'd
10 be witnessed and it would help my case out and that is why
11 I was there.

12 Q Is there any question in your mind that when Mr.
13 Schindel had some of the drug in his hand sitting in your car
14 out in front of Liggett's Drug Store he was intending to give
15 you some of that drug? My question is: Is there any
16 question in your mind that was Mr. Schindel's intent?

17 A. I guess he intended to give me a few pills
18 since -- if he was sick and I had helped him out. As far as
19 I knew it was going to cure what was ailing him.

20 Q You say you guess. I ask you: Is there any
21 question in your mind that is what Mr. Schindel was intending
22 to --

23 MR. TRAVOSTINO: Your Honor, I would submit --

1 A. The conversation between Weston and I was about
2 Weston was to receive or to give one hundred dollars to an
3 individual known as Windy Schindel. For this one hundred
4 dollars Schindel was to receive a prescription from a Dr.
5 Salama and the prescription was for thirty dilaudid tablets.
6 MR. TRAVOSTINO: I move to strike that unless it's
7 clarified who made those statements. I believe it's hearsay
8 otherwise.
9 THE COURT: If they were made by the Defendant
10 they would not be hearsay and if they were made by this
11 officer it would not be hearsay.
12 MR. TRAVOSTINO: I believe the statements Officer
13 Morgan is testifying to were made by the prior witness.
14 THE COURT: Would you clarify as to the speaker.
15 BY MR. GRAHAM:
16 Q Who was this conversation with in which you
17 obtained the understanding you just testified to?
18 A. That was with James Weston.
19 Q What was your input into the conversation, sir?
20 Excuse me. Strike that question.
21 Had you had a conversation with Mr. Weston
22 concerning Mr. Schindel prior to the conversation you just
23 testified to?

1 A. Yes, sir.

2 Q. When was this?

3 A. This would have been in late February - early March

4 of this year.

5 Q. Late February or early March conversation, did that

6 make any reference to what happened between Mr. Schindel and

7 Mr. Weston on the 12th of May?

8 MR. TRAVOSTINO: I'll object to that question,

9 Your Honor. I believe it calls for hearsay. Mr. Weston could

10 have testified about that. I wasn't able to cross examine

11 him with regard to that conversation.

12 MR. GRAHAM: I think Mr. Morgan can comment as to

13 the subject matter of the conversation.

14 THE COURT: He cannot testify as to what the

15 conversation was but only to the subject matter, which is not

16 offered for the truth contained.

17 MR. GRAHAM: That is correct, Your Honor.

18 BY MR. GRAHAM:

19 Q. Did the subject matter of your late February - early

20 March conversation with Mr. Weston have anything to do with

21 the events that took place on the 12th of May, 1977?

22 A. No, sir.

23 Q. When was the first time you became aware of what

1 was happening or what was to happen on the 12th of May, 1977?
2 A. On the 12th of May, 10:15 - 10:30 in the morning.
3 Q. From whom did you receive this understanding?
4 A. From the Assistant Commonwealth Attorney, Steven
5 Merril.
6 Q. About what time was that?
7 A. 10:15 - 10:30 a.m.
8 Q. After you had a conversation with Mr. Merril did
9 there come a time you had a conversation with Mr. Weston?
10 A. Yes, sir. There was.
11 Q. Were there two separate conversations related?
12 A. Yes. There was.
13 Q. Where did this conversation with Mr. Weston take
14 place and approximately what time?
15 A. It took place in my office, Narcotics Section, here
16 in Fairfax County, approximately 11:00 - 11:15 a.m.
17 Q. After you had a conversation with Mr. Weston what,
18 if anything, did you say or during the conversation what, if
19 anything, did you say?
20 A. I evaluated the information Weston had provided to
21 me and suggested a course of action which would be legal we
22 could take to perhaps apprehend individuals involved in this
23 narcotics transaction.

1 Q To your understanding at that point how many
2 individuals were involved that would have been the subject or
3 the focus of that investigation?
4 A. It would have been Dr. Salama and the Defendant,
5 Windy Schindel.
6 Q Had you known Dr. Salama prior to this? Had you
7 known of Dr. Salama prior to this?
8 A. I knew of him. Yes, sir.
9 Q What, if any, direction did you provide in order
10 to further this investigation at that time?
11 A. I advised Weston that the way we would have to
12 handle the case or work this situation to give the prescribed
13 amount of money, which was one hundred dollars, to Winfield
14 Schindel; in return Schindel would obtain a prescription for
15 dilaudid from Dr. Salama, which in turn Schindel would either
16 give to Weston or would cash for Weston and Weston would get
17 a certain amount of the dilaudid, at which time we would
18 affect arrest.
19 Q What, if any, steps did you take in order to
20 implement this transaction?
21 A. First of all, we marked the money.
22 Q Where did you get the money from, if you recall?
23 A. I believe it was police money.

1 Q What, if anything, did you do with the money?

2 A I marked the police money and xeroxed copies of

3 the six twenty dollar bills.

4 Q Did you make a record of the serial numbers on the

5 bills?

6 A Through the xerox copies, yes.

7 Q What, if anything, did you do with that money?

8 A At this time I did search James Weston. He had no

9 additional money about his person nor did he have any

10 narcotics or prescriptions. I searched him, a thorough search.

11 Q What did you and Mr. Weston do subsequent to the

12 things you testified to?

13 A At this time I gave Mr. Weston the money. I drove

14 him to the Courthouse; parked in the parking lot downstairs;

15 followed Weston into the Courthouse.

16 Q Where did you go in the Courthouse?

17 A I stayed behind Weston. I observed him meet an

18 individual who is the Defendant, Windy Schindel, in the

19 corridor directly below this Court; he met him. At that time

20 I proceeded up the steps to the outside corridor to this

21 room, however, keeping Weston and Schindel in my sight.

22 Q What, if anything, did you observe take place

23 between Mr. Weston and Mr. Schindel?

1 A. Schindel was sitting on a bench next to Salama
2 downstairs. Schindel -- Correction. Schindel got up from the
3 bench, walked with Weston to would be the south side of the
4 corridor. And I observed Weston hand something from his
5 pocket and hand it to Schindel. It was green. I couldn't
6 exactly tell what it was but I believed it to be the police
7 money.
8 Q. What, if anything, happened thereafter?
9 A. At this time Schindel and Weston walked back to
10 where Dr. Salama was seated on the bench downstairs.
11 Schindel sat down next to Dr. Salama for a moment and they
12 spoke. Dr. Salama and Schindel got up from the bench and
13 proceeded out the east door of the Courthouse, the main door,
14 and proceeded south on Route 123.
15 Q. What did you do?
16 A. At this time I started following them at a pace of
17 probably thirty - thirty-five - forty feet behind them.
18 Q. Were there any other undercover agents involved in
19 your observations at this time?
20 A. Yes, sir. There was Investigator Blackman of the
21 Narcotics Section.
22 Q. Where did you go?
23 A. I followed them to -- they went to the First

1 Virginia Bank to the alley to the First Virginia Bank and to
2 the parking lot, which the building faces University
3 Boulevard. I took up a station of surveillance point be
4 street level--kind of a parking area underneath--I was up
5 above where Schindel and Dr. Salama went; they went to Dr.
6 Salama's Cadillac, which was parked in a parking lot
7 adjacent to this ground floor parking area.
8 Q Do you recall the color of the Cadillac?
9 A. I believe it was a pink or perhaps salmon color.
10 Q Approximately how far were you -- how far was your
11 position from the Cadillac at the time you observed this?
12 A. Fifty yards.
13 Q What, if anything, did you observe take place
14 inside the Cadillac?
15 A. Salama was seated directly behind the steering
16 wheel; Windy Schindel was seated in the right front passenger
17 seat. I observed them speaking to each other. It looked
18 like they were carrying on a conversation. Their heads were
19 pointed towards each other. I observed Schindel make a
20 motion like this (Indicating). I observed approximately a
21 minute later Salama making a motion to this (Indicating). I
22 could not see if anything or what was passed between them.
23 Q Then what happened?

1 A. Several seconds later Schindel opened the door of
2 the Cadillac; put something white into his pants pocket and
3 proceeded to run back to the Courthouse.
4 Q. What did you do at this time?
5 A. At this time I placed Dr. Salama under arrest.
6 Q. Did you have occasion to subject Dr. Salama to a
7 search when you placed him under arrest?
8 A. I did, sir.
9 Q. What, if anything, was disclosed as a result of the
10 search?
11 A. I found five of the six twenty dollar bills that I
12 had given Mr. Weston in our office in Salama's right front
13 pants pocket. That was the same marked money I had given
14 Weston approximately a half hour previous.
15 Q. Did you have an occasion to compare the serial
16 numbers of the money you found on Dr. Salama with serial
17 numbers of the money or at least five of the six bills that
18 were given to Mr. Weston in your office?
19 A. Yes, sir. I did.
20 Q. What was the -- How did they compare?
21 A. They were identical.
22 Q. What did you do then?
23 A. At this time Dr. Salama -- I left Dr. Salama with

1 Investigator Blackman, who was there with me.

2 Q On the scene in the parking lot?

3 A Yes, sir.

4 I went back to the Courthouse; observed Schindel

5 come into the main doors of the Courthouse downstairs.

6 Q Approximately how long after Mr. Schindel left Dr.

7 Salama's car did you arrive back in the Courthouse to observe

8 Mr. Schindel?

9 A Two minutes, perhaps two to three minutes.

10 Q What did you find -- What did you see when you

11 arrived back at the Courthouse?

12 A I didn't see Schindel. When I got back into the

13 Courthouse I didn't see Schindel. I did find Weston however,

14 who was in the main corridor downstairs.

15 Q Did there come a time when you saw Mr. Schindel

16 and Mr. Weston together thereafter?

17 A I did find Schindel. He was in a Courtroom

18 downstairs.

19 Q What happened then?

20 A At this time I responded back to Fairfax City and

21 obtained warrants for Salama where he was processed and

22 everything in Fairfax City.

23 Q Did there come a time when you did return to the

1 Courthouse?

2 A. Yes, sir.

3 Q Where was Mr. Schindel to your knowledge?

4 A. Mr. Schindel had left the Courthouse with Weston

5 and had gotten into Weston's -- I believe a white Plymouth

6 station wagon, which was parked outside of the Courthouse at

7 one of the meters. They had gotten in the car and were

8 proceeding eastbound on Route 236.

9 Q Did you observe Mr. Schindel and Mr. Weston

10 leaving in Mr. Weston's car?

11 A. Yes, sir. I did.

12 Q Stopping you right there, Investigator. What was

13 your understanding of what was to take place thereafter?

14 MR. TRAVOSTINO: I object at this time until a

15 proper foundation is laid for his understanding or how he got

16 the understanding.

17 BY MR. GRAHAM:

18 Q In your initial interview with Mr. Weston in your

19 office had you given him any directions in regard to what he

20 was to do?

21 A. Yes, sir.

22 Q Based on the directions you gave Mr. Weston what

23 was your expectation of what was to take place?

1 A. Weston was to go with Schindel, who had the
2 prescription in his possession, to the nearest Drug Fair or
3 drug store, which would possibly be the Dart Drug in the
4 University Shopping Center approximately one block from the
5 Courthouse. At that drug store we were hoping that Schindel
6 would cash the prescription and affect the sale to Weston, at
7 which time we would arrest him.
8 Q. What was your understanding in regard to the use
9 of the one hundred dollars in marked bills at the time you
10 gave them to Mr. Weston?
11 MR. TRAVOSTINO: Again I would object.
12 THE COURT: Sustain the objection.
13 BY MR. GRAHAM:
14 Q. Why did you give the bills to Mr. Weston, sir?
15 A. So he would give it to Schindel and Schindel would
16 receive the prescription from Dr. Salama. The hundred dollars
17 was payment for the prescription. There was no question about
18 it.
19 Q. At the time you observed Mr. Weston and Mr. Schindel
20 in Mr. Weston's car going to the drug store here near the
21 corner of the Courthouse were there any other officers
22 involved in the observations at that time?
23 A. Yes, sir.

1 Q How many others?

2 A Three others besides myself.

3 Q Chronologically would you relate to the ladies and

4 gentlemen of the Jury what you observed happen after they

5 arrived at University Drug Store?

6 A Weston, who was operating the vehicle, and Schindel

7 got out of the automobile, started walking towards the Drug

8 Fair, at which time it appeared that Schindel balked; they

9 stopped. Weston and Schindel had a conversation. I was not

10 privileged to that communication due to the distance of

11 approximately twenty-five yards from them. At this time

12 Weston got back behind the driver's seat; Schindel got in the

13 passenger seat. They exited the parking lot.

14 Weston out the window was waving his hand like

15 this (Indicating) as to follow, a following motion. At which

16 time we did follow --

17 Q Where did you follow them?

18 A We followed them down Route -- I believe Route

19 237. We followed eventually into Vienna unto Maple Avenue.

20 Q What was the destination?

21 A Their destination, they finally parked in a

22 parking lot of Liggett's Pharmacy at 107 Maple Street in the

23 Town of Vienna.

1 Q Where did you locate yourself at that time?

2 A. After I observed where they pulled into I parked

3 on the opposite side of the building and walked across a

4 street and observed Schindel and Weston walk into the

5 pharmacy.

6 Q All right, sir. What happened then?

7 A. After approximately ten minutes or so, ten to

8 fifteen minutes, inside the pharmacy Weston and Schindel

9 returned. Schindel was carrying a small package, a small

10 white bag.

11 Q Then what happened?

12 A. Weston got in behind the driver's seat of the

13 automobile; Schindel was in the passenger side. I observed

14 him open the bag, drop the bag on the floor. He had a small

15 amber colored plastic vial in his hand. He took the top

16 off and poured a substance, what appeared to be yellow tablets,

17 into his hand. He had the amber container in his hand and

18 was counting the pills out in this nature.

19 Q Approximately how far were you from the vehicle

20 at the time you observed this?

21 A. Fifteen to twenty feet.

22 Q Was there any pre-arranged plan or signal which

23 would prompt you to approach the vehicle?

1 A. Yes, sir.

2 Q Was the pre-arranged plan or signal given?

3 A. When Weston was about to receive or did receive the

4 suspected dilaudid he was to itch his head like this

5 (Indicating), push his hair or something of that nature,

6 which would indicate to us and the other investigators around

7 that he was about to receive or had obtained the dilaudid.

8 Q Was any such sign forthcoming from Mr. Weston?

9 A. No, sir.

10 Q When did you decide -- Who moved in ultimately?

11 A. I was the closest officer there. I did move in.

12 I saw what appeared to be dilaudids. I looked. Weston had

13 his hand out in this type fashion (Indicating). It looked

14 like the signal or the transaction were about to occur, at

15 which time I walked up to the automobile, leaned in, grabbed

16 a hold of Schindel's left hand and folded it. At this time

17 Schindel made a motion up towards his mouth with his hand,

18 at which time I drew my revolver and advised him not to

19 attempt to swallow the pills, at which time he surrendered

20 himself.

21 Q Did you have an occasion to count the number of

22 pills in Mr. Schindel's hand?

23 A. Yes, sir. I did.

1 Q Do you know how many there were approximately?

2 A. There were exactly fourteen.

3 Q Did you have occasion to take the drugs in your

4 custody at that time?

5 A. Yes, sir. I did.

6 Q What, if anything, did you do with the narcotics?

7 A. I took the narcotics; kept them on my person. I

8 put them back in the amber vial; screwed the top back on;

9 placed in my pocket, my left front shirt pocket; kept them in

10 my possession till I got back to my office that evening, at

11 which time I placed them in a lock seal property envelope,

12 which is used to secure the narcotics.

13 Q What did you do with them after that?

14 A. After that I placed them into a file cabinet, to

15 which I have sole access, for security purposes until I

16 could take them to the Northern Virginia Forensic Laboratory

17 for analysis.

18 Q At the time you placed them in a lock seal envelope

19 did you label them in any way that would enable you later

20 on to identify the container containing the drugs?

21 A. I just don't recall at this time.

22 Q Do you have the drug with you today?

23 A. Yes, sir. I do.

1 Q Would you please open it.

2 Would you please identify what you have in your

3 hand now.

4 A This is the prescription bottle, with the name,

5 Winfield Schindel, on it, date, 5/12/77, contains dilaudid,

6 fourteen milligram, paid a total of three forty-five for

7 the drug. This is the same canister I seized from Schindel's

8 hand.

9 Q After you placed it in the evidence locker what,

10 if anything -- How long did you keep it in your evidence

11 locker?

12 A I kept it in my evidence locker till the

13 12th day of May -- Excuse me -- till the 18th day of May,

14 1977.

15 Q What, if anything, did you do with it at this time?

16 A I took it from the locker, transported it to the

17 Northern Virginia Forensic Laboratory and turned it over to

18 Chemist Jean Hepner.

19 Q At the time you placed the envelope, the large

20 envelope, into your property locker what was the condition of

21 the lock and seal you placed on that?

22 A The lock and seal, it's two metal seals on this

23 envelope, which were put down into the fastener there, fastened

1 it. It's almost impossible to get them out without des-
2 truction of the envelope. I put my initials, the date and
3 time I secured them in this envelope and ran a piece of scotch
4 tape across the seals and my name.
5 Q Sir, is that name written in your handwriting?
6 A Yes, sir. It's my initials. G. D. M., dated
7 5/12/77 at 17:30.
8 Q When did you put that writing on there?
9 A Very shortly after I sealed the drugs in the
10 envelope.
11 Q At the time you removed the envelope from the
12 locker was the condition of the seal and lock on the envelope?
13 A The same as when I put it in there.
14 Q Where did you take it from there?
15 A To the Northern Virginia Forensic Laboratory in
16 Merrifield, Virginia.
17 Q To whom, if anyone, did you give the suspected
18 narcotic at the Northern Virginia Laboratory?
19 A To Chemist Karl Hepner.
20 Q During the time this suspected narcotic was in
21 your possession did you add to it, subtract from it or affect
22 the contents of those pills in any way?
23 A No, sir. I did not.

1 Q Did there come a time thereafter when you
2 retreived the narcotic from the Northern Virginia Laboratory?
3 A Yes, sir. On the 27th day of June, 1977.
4 Q What, if anything, did you do with the drug after
5 that, sir?
6 A I took the same lock seal envelope; they were
7 resealed and transported back to our property room where it
8 was placed in a vault and I got it out of the vault this
9 morning.
10 Q Investigator Morgan, at your initial conversation
11 with Mr. Weston who suggested what was about to take place?
12 Who was the first one to bring the subject matter up of what
13 was about to take place?
14 A The first person was Steve Merril.
15 Q And who, to your understanding, was the first
16 person to actually suggest what was to take place; in other
17 words, who was the first -- How many people did you talk
18 with regarding this transaction on the 12th of May?
19 A I talked to Commonwealth Attorney, Steve Merril;
20 I talked to Weston's defense attorney, Jerry Phillips, and I
21 talked to James Weston.
22 Q What was your understanding of why Mr. Merril
23 called you?

1 suggest to Mr. Weston to initiate this transaction?

2 A. No, sir. I did not.

3 Q. Did you threaten, promise or offer any inducement

4 whatsoever to Mr. Weston in order to influence him to

5 suggest this transaction?

6 A. No, sir.

7 Q. Do you know of anyone else to your knowledge who

8 offered Mr. Weston any threats, promises or inducements in

9 order to get -- to influence him to initiate this

10 transaction?

11 A. I do not.

12 Q. Do you know of anyone else other than Mr. Weston

13 himself who had the idea initially of initiating this

14 transaction?

15 A. I know of no one, sir.

16 Q. What type of drug was involved in this case?

17 A. Dilaudid.

18 Q. Is there an illegal market for dilaudid?

19 A. Very much so.

20 Q. By whom is this illegal market generated, in your

21 experience?

22 A. Usually by heroin addicts or morphine addicts whose

23 supply has dried up, their supplier has been arrested or just

1 simply not having enough money to purchase clandestine
2 heroin or morphine; they purchase a cheaper dilaudid tablet.
3 Q In your experience as an undercover officer had
4 you had any exposure or experience to the drug dilaudid?
5 A Oh, yes, sir.
6 Q Do you know whether or not the drug dilaudid had
7 a street market or street value, that is, an illegal value?
8 A If you buy it in quantity it's usually between
9 sixteen to eighteen dollars per tablet; also, it depends on
10 the strength of the tablet. A four milligram tablet is more
11 expensive, maybe a dollar or two, than a one milligram tablet.
12 The average price if you buy them singly would be
13 approximately twenty dollars per tablet.
14 Q Do you know how much it cost to fill that
15 prescription right there you have in front of you?
16 A Yes, sir. I do. Three dollars and forty-five
17 cents.
18 Q How many pills are included in that prescription?
19 A Fourteen.
20 Q Did you ever tell Mr. Weston during the course of
21 this event to make sure he bought a drug from Mr. Schindel?
22 MR. TRAVOSTINO: Objection. Leading question.
23 THE COURT: Overrule the objection.

1 That is the only additional question with regard to that
2 sequence of events.
3 THE COURT: I think he testified he grabbed his
4 hand and his other hand made a motion for his mouth as if to
5 take them.
6 MR. GRAHAM: That is correct. And what, if anything,
7 did Mr. Schindel do with his hand prior to the time
8 Investigator Morgan approached the --
9 THE COURT: Go ahead. The Jury heard it once
10 before.
11 BY MR. GRAHAM:
12 Q Can you demonstrate, Investigator Morgan, what,
13 if anything, Mr. Schindel did with his hands at the time he
14 poured the pills out and up to the time you approached the
15 car yourself?
16 A. Basically what he was doing, he had them in his
17 hand, he poured them into the palm of his hand and had the
18 container in his hand like this (Indicating)without the
19 top on, of course, and was counting. I don't recall with
20 his middle finger or his little finger but he was counting
21 them out, pushing towards his fingers; in other words, he had
22 a vial here and he had three or four tablets here, two
23 separate piles.

1 Section in testifying and doing everything we wished to help
2 us prosecute Dr. Salama that, of course, this would be made
3 known to the Commonwealth Attorney and under a new Code, a
4 new Statute enacted by Virginia, he would be granted total
5 immunity from prosecution. This is what we told him. And
6 at this time I asked him a couple of questions. I asked him
7 who did he give the hundred dollars to Weston had given him
8 and he told me Salama. I asked him what for and he said for
9 a prescription. I asked Schindel what he was going to do
10 with the prescription and he said he was going to -- about to
11 eat them prior to me arresting him. I asked Schindel --
12 Q What?
13 A. He was about to eat them prior to me arresting him.
14 That is what the motion towards his mouth was about after I
15 grabbed his hand.
16 I asked Schindel did Dr. Salama examine him. He
17 said he did. I asked him how he examined him and he said he
18 felt his back in the hallway downstairs in the Courtroom.
19 At this time he wrote him a prescription for the dilaudids.
20 I asked Schindel had Salama ever treated him prior and he
21 said he had. I asked him for what. He said kidney stones.
22 I asked what medicine Salama had previously prescribed for
23 him and I believe he said either Tylenol or Estinyl --

1 I can't recall which one -- and percodan. He said this was
2 the first time Salama had ever recommended dilaudid.
3 Q Did you ask Mr. Schindel whether or not there was
4 a debt owing at that time between the doctor and Mr. Schindel?
5 A Yes, sir. I asked him did he owe Dr. Salama any
6 money. He said he did not.
7 Q The person you've been referring to in your
8 testimony, Investigator Morgan, as Windy Schindel is that
9 gentleman here today?
10 A Yes, sir. He is.
11 Q Would you point him out for the Court please?
12 A Windy Schindel, seated next to counsel in the
13 white shirt, blue tie, bushy blonde hair or light brown hair.
14 Q The location where you placed Mr. Schindel under
15 arrest is that located in the City of Vienna, County of
16 Fairfax?
17 A Town of Vienna, County of Fairfax. Yes.
18 MR. GRAHAM: No further questions at this time.
19 THE COURT: Cross examine.
20 CROSS EXAMINATION
21 BY MR. TRAVOSTINO:
22 Q Did Mr. Schindel know you prior to May 12th, know
23 who you were?

1 A. No. He did not.

2 Q Do you recall whether or not from what Mr. Weston

3 might have told you whether or not -- how many pills Mr.

4 Weston was to get? Did he tell you how many pills he was

5 to get?

6 A. It was my understanding he was to get thirty

7 dilaudid tablets.

8 Q Thirty?

9 A. Yes, sir.

10 Q How many were in the vial there?

11 A. Fourteen.

12 Q He was going to get thirty for a hundred dollars?

13 A. Yes, sir.

14 Q He told you that prior to his going to the

15 pharmacy with Mr. Schindel?

16 A. He told me that in my office.

17 Q With regard to when Mr. Weston initiated or who-

18 ever initiated this entire drug transaction is it possible

19 someone from the Commonwealth Attorney's Office, Mr. Merril,

20 or in conjunction with Mr. Weston's attorney, brought this

21 whole idea up about getting Dr. Salama, working for the

22 Narcotics Department to get Dr. Salama on a charge?

23 A. I'm sorry. I don't follow your question.

1 placed it in my left front shirt pocket and took it back to
2 my office that evening, at which time I placed it in this
3 lock seal envelope and then it went into a file cabinet which
4 we have that is used exclusively for drug security.
5 Q Did you testify you didn't know whether you labelled
6 it at that point?
7 A I didn't label the bottle. I couldn't remember if
8 I labelled the bottle or not.
9 Q The bottle was in that container --
10 A The bottle was inside the lock seal envelope, yes,
11 sir.
12 Q There would be no reason to label it then, would
13 there?
14 A Most definitely. There's always a reason for
15 labelling.
16 Q What?
17 A There's always a reason for labelling.
18 Q On direct examination didn't you testify you put
19 it in the envelope at that point?
20 A I most definitely did, sir.
21 Q You testified there was no promise for leniency or
22 no deal for Mr. Weston. Isn't it a fact he did get leniency
23 in his sentencing? Did you work towards that?

1 in?

2 A. I saw Schindel pouring the drugs into his hand.
3 I knew the situation was about ready to go down. I waited
4 ten - fifteen - twenty seconds. The situation didn't go
5 down.

6 Q. Were you approaching the vehicle at the point you
7 saw him pouring the drugs?

8 A. Yes, sir. I was walking outside the vehicle.
9 Weston had his door open so I could get a plain view of what
10 was occurring inside the automobile.

11 Q. You were standing looking in at that point?

12 A. As close as you and I, yes, sir.

13 Q. He was pouring pills at that time?

14 A. Yes. He already poured them. He was counting at
15 that point.

16 Q. Did you touch the vehicle at that point?

17 A. No, sir.

18 Q. Were you close enough to touch it?

19 A. No, sir.

20 Q. You never saw the drugs change hands, isn't that
21 right?

22 A. That is correct.

23 MR. TRAVOSTINO: That is all I have.

1 Q In what capacity are you employed?

2 A I'm a forensic chemist and chemist supervisor.

3 Q How long have you held that position?

4 A I've been a forensic chemist for approximately

5 five years.

6 Q How long have you been employed by the

7 Commonwealth of Virginia?

8 A Approximately five years.

9 Q Could you tell the ladies and gentlemen of the

10 Jury your academic qualifications for the job for which you

11 are now --

12 MR. TRAVOSTINO: If I can interpose, I will

13 stipulate to his qualifications.

14 THE COURT: The Court will accept the stipulation

15 as to his qualifications.

16 MR. GRAHAM: Your Honor, is that tantamount to

17 a stipulation as to Dr. Hepner's expertise in his field?

18 THE COURT: It is.

19 MR. GRAHAM: May I ask the Court to mark this as

20 Commonwealth's Exhibit Number 1?

21 THE COURT: Be marked as Number 1 for identification.

22 (The envelope and contents

23 was marked for identification

1 as Commonwealth's Exhibit
2 No. 1.)
3 BY MR. GRAHAM:
4 Q Doctor, I'm now handing you a light tan manila
5 envelope and I ask you if you've ever seen that envelope
6 before?
7 A. Yes, sir. This envelope bears my initials and the
8 case identification number.
9 Q When was the first time you saw that envelope?
10 A. This envelope was delivered to the laboratory on
11 May 18, 1977.
12 Q By whom was it delivered?
13 A. The envelope was delivered by Investigator Morgan.
14 Q Did there come a time that envelope came into
15 your possession?
16 A. Yes. The envelope came into my possession on
17 5/18/77.
18 Q Who gave it to you?
19 A. Investigator Morgan.
20 Q Did you examine the envelope at the time you
21 received it?
22 A. Yes, sir.
23 Q What condition was it in?

1 A. The envelope was in a sealed condition. The
2 seals, the tamper proof seals, on the back of the envelope
3 were intact.
4 Q. What did you do with it after you received it?
5 A. The evidence was assigned an identification
6 number in the laboratory. I took possession of the envelope.
7 It was placed in my private safe until such time as it was
8 removed and opened and the specimens therein subjected to
9 analysis.
10 Q. That private safe to which you refer, who has
11 access to that safe?
12 A. I have access to it and the Director of the
13 laboratory has a combination in a tamper proof envelope
14 similar to this in event of emergency.
15 Q. Did there come a time when you removed that
16 envelope from the safe you're referring to?
17 A. Yes, sir.
18 Q. Approximately how long after the time you put it
19 in did you remove it?
20 A. I really couldn't say exactly. It would be sometime
21 prior to June 24th.
22 Q. Did you have occasion to examine the envelope when
23 it was removed from the safe?

1 A. Yes, sir.

2 Q. In what condition was it in, sir?

3 A. It was still sealed.

4 Q. Did there come a time when you performed a test

5 on the contents of that envelope to determine its chemical

6 make-up?

7 A. Yes, sir.

8 Q. After performing such a test did you arrive at a

9 conclusion as to the chemical make-up of that substance?

10 A. Yes, sir.

11 Q. What was your conclusion, sir?

12 A. The envelope was found to contain a plastic vial

13 with fourteen yellow tablets. The tablets were identified

14 as dilaudid, which contains hydromorphine.

15 Q. Do you have a schedule of that drug which you

16 just described?

17 A. Yes. Schedule II.

18 Q. All right, sir. What, if any, narcotic does the

19 prescription drug dilaudid contain?

20 A. Dilaudid contains hydromorphine.

21 Q. And what is that in layman's terms?

22 A. Hydromorphine is a chemical compound similar in

23 action and structure to morphine.

1 Q What category of drug or narcotic does morphine
2 fit within?
3 A. It's a pain killer, an analgesic compound.
4 Q In terms of degrees of strength how would you
5 characterize the pain killer morphine?
6 A. I would say it would be on a par with morphine.
7 Q Now, after performing tests you testified did you
8 on the drug did you reduce the results of the tests to
9 writing?
10 A. Yes, sir. I did.
11 Q And on what, if anything, did you enter your written
12 tests results on?
13 A. The results were entered on a laboratory report
14 form certificate of analysis, a copy of which is attached to
15 the evidence.
16 Q What happened to the envelope containing the
17 narcotic after you completed your examination of it?
18 A. Upon completion of the examination the plastic
19 vial was replaced down into the envelope, the envelope was
20 sealed with fiber tape with my initials written across it.
21 Q Would you show the ladies and gentlemen of the
22 Jury how you originally gained entry to the envelope and
23 where you sealed the envelope subsequent to performing your

1 examination?

2 A. Yes, sir. The original was left intact. These are

3 two metal tamper proof closures. The officer had then taped

4 over those with his initials and any attempt to open that

5 flap would be apparent. I opened the envelope by slashing it

6 across the top with a surgical scalpel, opening the envelope

7 and removing the contents.

8 Q. Doctor, could you now open the envelope and

9 remove the contents.

10 The container housing the pills is that the same

11 container the pills were in when you first received it and

12 opened it?

13 A. Yes.

14 Sir, this container bears my initials and the

15 case identification number for this case and the seal which I

16 placed on it before putting it back into the envelope is

17 still there and intact.

18 Q. How certain are you of what you analyzed that that

19 is the same?

20 A. There's no doubt in my mind.

21 MR. GRAHAM: I move for the admission of

22 Commonwealth's Exhibit Number 1 into evidence as Commonwealth's

23 Exhibit Number 1

1 THE COURT: The Court would deny the motion. But
2 you have leave to renew it at the end of the evidence.
3 MR. TRAVOSTINO: Thank you.
4 (The following resumed within the hearing of
5 the Jury.)
6 MR. TRAVOSTINO: I call the Defendant to the
7 stand.
8 Whereupon,
9 WINFIELD SCHINDEL
10 was called as a witness by and in his own behalf, having
11 been first duly sworn by the Clerk of the Court, was
12 examined and testified as follows:
13 DIRECT EXAMINATION
14 BY MR. TRAVOSTINO:
15 Q State your full name for the record.
16 A. Winfield Schindel.
17 Q Mr. Schindel, recalling your attention back to
18 May 12th of 1977, do you recall who you were with at the
19 Courthouse that morning?
20 A. I was with Murdock Edibar and William Highland.
21 Q What time of the morning did you first meet up
22 with these gentlemen?
23 A. We came from our apartment at 8:30 in the

1 morning.

2 Q To this Courthouse?

3 A Yes.

4 Q Where were you coming from?

5 A Washington.

6 Q You lived in Washington at that time?

7 A Yes.

8 Q Who drove?

9 A Bill.

10 THE JUROR: Sir, I can't hear.

11 THE COURT: Could you stand a little bit closer to

12 the Jury Box so the Jury can hear.

13 BY MR. TRAVOSTINO:

14 Q You drove to the Courthouse that morning. Who

15 drove?

16 A William Highland.

17 Q Did you have a vehicle at that time?

18 A No.

19 Q Do you recall specifically with reference to what

20 you heard from Mr. Weston's testimony, do you recall seeing

21 Mr. Weston at the Courthouse that day?

22 A When we first got there, no. We were standing out

23 in the hall and I saw him walk -- we saw him walk towards us.

1 Q Did you know Mr. Weston at that time?

2 A He was a friend of Murdock's I'd met probably a

3 month and a half - two months.

4 Q Had you ever met him on any other occasion?

5 A Just over at his apartment.

6 Q Do you recall what happened? What did Mr. Weston

7 do when he approached you?

8 A Yes. He came right up and asked Murdock, directly

9 to Murdock, if he had any heroin and he said no and then he

10 said that could he get some and Murdock said he could get

11 some downtown and that was about it. Then I asked him, I

12 said if you're going to go downtown will you lend me a

13 hundred dollars till we get down there and I'll pay you back.

14 I said I'd give him a hundred and twenty if he wanted it

15 back for lending it to me. He said no right away and said

16 no, I can't lend you the money, I have a traffic fine or

17 something.

18 Q What was the reason you wanted the hundred dollars?

19 A Because I ran into my doctor and I'd been having

20 the same symptoms he treated me for before and I was

21 talking to him in the Courtroom and he said he wasn't going

22 back to his office, he had a date at his clinic and I wanted

23 him to look at me and prescribe temporary medication until I

1 could come tomorrow and I owed him approximately eighty-five
2 dollars for x-rays and urinalysis from before and he wanted--
3 he said to come bring him the money and he would give me a
4 temporary prescription. So, I just forgot. I said I'll
5 have to come to your office after I leave here and go back
6 home and get my money because the person with me didn't have
7 his check book and I didn't have it.
8 At this time Mr. Weston came back to me and said,
9 My traffic fine was reduced from two hundred and fifty
10 dollars to, I think, a hundred dollars and I can lend you the
11 hundred dollars you wanted now.
12 Q What was the reason you needed the prescription
13 at that point?
14 A I was passing blood through my urine.
15 Q Had you been -- Who was the doctor who was treating
16 you?
17 A Dr. Salama.
18 Q Was he the doctor in the Courthouse that day?
19 A Yes.
20 Q What was the reason you needed the pills
21 immediately?
22 MR. GRAHAM: I object, Your Honor, on two grounds:
23 number one, on the basis of a leading question; number two,

1 on the basis the question assumes matters not in evidence.
2 There is no indication he immediately needed a prescription
3 at that point.
4 THE COURT: I don't think he's doing it on the
5 Commonwealth's evidence; he can put on his own evidence.
6 The Court would overrule the objection.
7 MR. GRAHAM: Very well.
8 BY MR. TRAVOSTINO:
9 Q What was the reason you felt you needed the pills
10 at that point?
11 A. Because I was beginning to pass a kidney stone. I
12 was hurting quite a bit.
13 Q Had you had this problem previously?
14 A. Yes. I had it approximately three months before
15 that.
16 Q How did it occur? Did it occur suddenly or was it
17 over a long period of time this condition persisted?
18 A. Well, the first time I ever had it was more than
19 three years ago. It's a re-occurring illness in your kidneys.
20 I have a back and kidney problem.
21 Q You testified Mr. Weston came back and said his
22 fine had been reduced. What period of time elapsed between
23 the time he first refused to lend you the hundred dollars and

1 the time he came back and said he had the money?

2 A. I think it was about probably forty-five minutes -

3 half hour.

4 Q. What time of day was this this occurred when he

5 came back the second time?

6 A. It must have been around 11 o'clock, I believe.

7 Q. What occurred when he came back and said his

8 traffic fine had been reduced? What occurred after that?

9 A. I said, You can lend me the money then. He said,

10 Yes, I can lend you the money now. So, I borrowed the money

11 from him with the intentions of paying him back when we went

12 back down. He was going to come back down -- He was going to

13 take me back downtown where Murdock and Bill would already

14 have been and I was going to reimburse him for his money.

15 Q. What happened after that?

16 A. We were through so we all were left and I said --

17 he wanted me to ride with him and I said I'll ride with him

18 and we went to the drug store and I went in and gave the

19 prescription to the pharmacist and she filled it, took it

20 to the counter, paid for it and we walked out the door and

21 as we were walking out the door and when we got outside

22 around the corner he stopped and he asked me, Let me see the

23 bag, Can I see the pills, Let me hold the bag. And I just,

1 you know,felt something, what is this, why did he want to
2 look at the pills for and I, you know --
3 THE COURT: Speak louder so all members of the
4 Jury can hear you.
5 THE WITNESS: When we got outside he asked me, Let
6 me see the bag, Let me look at the pills. I thought something
7 was funny. I said, you know, no and I went on walking to
8 the car and he followed me around to the passenger side and
9 still saying, Let me look at them, Let me hold the pills.
10 And I said, You've seen pills before. No. Then he went
11 around his side, got in the door. I sat in the car, took the
12 pills out, was pouring some in my hand and another hand
13 slapped over mine and there was a gun thrown in my face and
14 complete immunity from five to forty years in prison was
15 offered to me right away for some charge -- I didn't have any
16 idea what it was.
17 BY MR. TRAVOSTINO:
18 Q What was the reason you poured the pills out into
19 your hand?
20 A. I was getting ready to eat some.
21 Q How many pills do you take at one time?
22 A. I usually take three to, sometimes, four.
23 Q Was it ever your intent to give any of those pills

1 to Mr. Weston?

2 A. There was no way I was going to give him any of

3 them.

4 Q. What was your plan after you had left the pharmacy?

5 What were you planning to do at that point?

6 A. I was going back home.

7 Q. Mr. Weston was going to drive you home?

8 A. Yes. He said he was going to drive me home. He

9 had to stop back at his job first. He was working right near

10 by.

11 Q. Once you got home what were you going to do with

12 Mr. Weston?

13 A. Him and Murdock, you know, his friend, they were

14 going to go and do whatever they had planned.

15 Q. Did you go to another pharmacy first?

16 A. Yes. He pulled into a pharmacy right across the

17 street over there.

18 Q. You didn't proceed to go into that pharmacy?

19 A. No. I told him the doctor told me to go to a

20 pharmacy and so I told him I wanted the one the doctor told

21 me to go to, I wanted to go there. And he said, No, No, We

22 can't go there, Let's go here. And I said, Let's go, you

23 know, to the one he told me. And he said, No, I'm working

1 nearby, I have to check in with my men so I don't want to
2 go over there right now. Then I said, The pharmacy in Vienna
3 was another so I suggested, take me to Vienna.
4 MR. TRAVOSTINO: That's all I have.
5 THE COURT: Cross examine.
6 CROSS EXAMINATION
7 BY MR. GRAHAM:
8 Q Mr. Schindel, you said you were a patient of Dr.
9 Salama's?
10 A. Yes.
11 Q How long have you been a patient of Dr. Salama's?
12 A. I'd been treated by him twice before that.
13 Q When was the first time you were treated by him?
14 A. I believe it was back in December.
15 Q In December?
16 A. I think so.
17 Q What were you treated for by him?
18 A. At that time for kidney stones.
19 Q Had you ever been treated for kidney stones prior
20 to the first time you went to Dr. Salama?
21 A. Yes.
22 Q How old were you?
23 A. Twenty-two.

1 on the day you purchased it. Is that correct?

2 A. Yes.

3 Q. Now, I ask you to look at it now.

4 See if you can tell me if that is the same bottle

5 you received from Liggett's Drug Store in Vienna on the 12th

6 of May?

7 A. I think so.

8 Q. Would you read the caption on the little piece of

9 paper inside the prescription?

10 A. Winfield Schindel.

11 Q. Does it give a dosage?

12 A. Every four to six hours.

13 Q. How many pills every four to six hours?

14 A. It says, Don't exceed three.

15 Q. How many pills every four to six hours, Mr.

16 Schindel?

17 A. It says, Take pills every four to six hours for

18 acute urinal pain, Don't exceed three in a day and report to

19 physician in two weeks.

20 Q. How many pills did you say you were about to take

21 before Officer Morgan placed you under arrest?

22 MR. TRAVOSTINO: Your Honor, I object to this. I

23 don't see the relevancy. If he's going beyond prescribed

1 amounts I don't see how it's relevant to this charge.

2 THE COURT: The Court overrules the objection.

3 MR. GRAHAM: Thank you, sir.

4 BY MR. GRAHAM:

5 Q How many pills did you say you were going to

6 injest into your system just before Officer Morgan placed

7 you under arrest?

8 A. I was getting ready to take three.

9 Q Did you say five a few moments ago, four or five?

10 A. No.

11 Q How many do you normally take at a time?

12 A. It depends at the time how much I was hurting.

13 If two didn't take it I would take two more.

14 Q Were you under a great deal of pain that day?

15 A. Yes. It hurts quite a bit.

16 Q How long had this pain been going on that day or

17 prior to that day?

18 A. It started about, I'd say, two to three days before.

19 Q Had you made any attempt to get in touch with Dr.

20 Salama two or three days before to alleviate the pain?

21 A. I had called his office.

22 Q You called his office?

23 A. (Indicating positive.)

1 A. Like I said, I asked him if he was planning on
2 going downtown with Murdock anyway and if he would lend me
3 a hundred dollars till we got down there and then I would
4 return it to him as soon as we got there and he immediately
5 said, No, I don't have the money, I have to pay a fine.
6 Q What did you want the hundred dollars for?
7 A. I wanted to pay off my whole doctor bill and get
8 treated from Dr. Salama right there with a temporary
9 prescription until I came to his office the next day.
10 Q How much did Dr. Salama tell you he was going to
11 charge you for writing the prescription?
12 A. He said he wanted ninety dollars and ten dollars
13 for the temporary prescription.
14 Q He wanted ninety dollars and ten dollars for the
15 temporary prescription. That would have made it perfectly
16 even?
17 A. According to him, yes.
18 Q Are you certain of that?
19 A. Yes.
20 Q Do you recall Dr. Salama telling you he wanted
21 ninety dollars plus ten dollars for the prescription?
22 A. He wanted the whole bill paid off and told me it
23 was a hundred dollars.

1 Q All right, sir. You just told me Dr. Salama told
2 you he wanted ninety dollars back bill plus ten dollars for
3 the prescription. Did Dr. Salama say that or did he not?
4 A Yes.
5 Q Yes, he did. Do you recall that?
6 A He wanted ten dollars and the back bill had to be
7 ninety dollars.
8 Q I believe you testified in your previous
9 testimony the bill for the second visit was ninety dollars
10 and you paid him fifteen dollars, isn't that correct?
11 A I paid him fifteen dollars, yes.
12 Q So, that left the balance of seventy-five dollars
13 at the time you initially approached Dr. Salama in the
14 Courthouse, isn't that correct?
15 A I wasn't arguing with him
16 Q Yes or no, Mr. Schindel?
17 A No.
18 Q How much did you owe Dr. Salama at the time you
19 approached him in the Courthouse?
20 A According to me I owed him seventy-five to
21 eighty dollars.
22 Q I believe your testimony was the original bill was
23 for ninety and you paid him fifteen dollars at the time of the

1 second office visit, leaving a balance of seventy-five. Is
2 that right or wrong?
3 A. That is right.
4 Q. That is right?
5 A. Yes.
6 Q. You have no question about that?
7 A. It could have been eighty.
8 Q. When Dr. Salama said you owed him ninety dollars
9 plus he wanted another ten for the prescription did you take
10 issue with that at all?
11 A. No. I didn't.
12 Q. You accepted it point blank?
13 A. I figured if I didn't owe it to him I would
14 tomorrow.
15 Q. What do you mean by that, sir?
16 A. I was going -- I was getting an appointment for
17 the next day, you know, to have more tests. I wasn't arguing
18 about what I owed him, what was on his books. He didn't have
19 his ledger there with him showing me penny for penny where I
20 spent my money with him.
21 Q. But you remembered how much you owed him or so you
22 stated?
23 A. Yes.

1 Q That was the extent, nothing further?

2 A. That's it.

3 Q Nothing more suggested by him at that time, nothing

4 more volunteered or suggested by you?

5 A. No.

6 Q Doesn't it seem a bit strange that Mr. Weston

7 would approach you and ask you to buy or ask you to sell him

8 some heroin or some dilaudid and then have him give you a

9 hundred dollars and not expect anything in return for it?

10 A. He didn't ask me for any heroin or dilaudid.

11 Q He didn't ask you?

12 A. No.

13 Q I see. Who did he ask initially?

14 A. Murdock Edibar.

15 Q And how did you become involved in obtaining a

16 loan of one hundred dollars from a man who asked your friend

17 for dilaudid or heroin?

18 A. Because me and Bill and Murdock were standing

19 there talking when Mr. Weston approached us, approached

20 Murdock. First I thought he was saying hi; then he started

21 asking him for heroin. At that point I asked Bill if he

22 brought his check book. He said, No. I didn't have the money

23 with me. So, I asked him. They were talking about

1 possibly going downtown or something like that. So, I said,
2 If you're going downtown would you lend me a hundred dollars,
3 I'll pay you back, I'll pay you back more, you know, if
4 necessary when we get down there and you all can go on.
5 He said, No, No, I can't do that, I don't have the money.
6 Q I understand he, Mr. Weston, came to Court for a
7 traffic offense?
8 A I think so.
9 Q Did he mention some figure like two hundred and
10 fifty dollars he expected to pay in fines?
11 A (Indicating positive.)
12 Q There came a time after your initial conversation
13 with Mr. Weston he returned and said it had not been as
14 large as he expected and therefore he had some extra money?
15 A Right.
16 Q But he didn't express any interest in buying any
17 drugs from you whatsoever, illegal or otherwise?
18 A Not to me.
19 Q A man who just expressed an interest in buying
20 drugs all of a sudden was in a position to lend you a hundred
21 dollars. Is that correct?
22 A Yes. When he came back and told me he was.
23 Q Did there come a time when you came back to Mr.

1 Weston after you had obtained the prescription from Dr. Salama
2 and told Mr. Weston you obtained the prescription?
3 A. When I came back into the Courtroom he came back
4 up to me and he acted like I was supposed to have something
5 for him or he said, Show me what you got. I didn't know what
6 he meant.
7 Q. You didn't know what he was talking about?
8 A. No.
9 Q. After he'd just given you a hundred dollars you
10 were standing there totally ignorant of what he expected
11 from you. Is that what you're telling the Jury?
12 A. He didn't expect anything from me. Well, I took
13 it like he meant I supposedly had a pocketful of drugs or
14 something like that.
15 Q. You said you didn't know what he was expecting but
16 you apparently interpreted from him somehow that he was
17 expecting something?
18 A. He asked me, Show me what you got. I told him
19 nothing.
20 Q. Had you told him what you were going to do with
21 the hundred dollars?
22 A. Yes. I told him I was going to pay my doctor.
23 Q. Had you told him you were going to get a

1 prescription with that one hundred dollars?

2 A. Yes.

3 Q. You did tell him that?

4 A. Right.

5 Q. Well then, he must have known what you had, drugs

6 or whatever?

7 A. If he was asking to see a prescription he didn't

8 ask to see a prescription; he asked to see some drugs or

9 something. I didn't know what he was talking about.

10 Q. Did you tell him you were going to get dilaudid

11 with the prescription?

12 A. No. I didn't.

13 Q. Had you told him what you were going to use the

14 prescription for, what you were going to do with the

15 prescription?

16 A. No. I told him I wanted to borrow the money to

17 pay back doctor bills and to get a temporary prescription

18 my doctor would give me until I went to his office.

19 Q. Did you indicate to Mr. Weston at that time what

20 the prescription was for?

21 A. No.

22 Q. He had no idea?

23 A. No.

1 A. I believe he didn't.

2 Q. He never asked you and you never volunteered?

3 A. No.

4 Q. Why did Mr. Weston accompany you in his car?

5 A. Because he didn't know how to get back to the

6 apartment after we left. So, I said I'd ride with him.

7 Q. Back down to what apartment?

8 A. In Washington.

9 Q. Why was he going to an apartment in Washington?

10 A. Because that is where Murdock and Bill lived in

11 the car we came in.

12 Q. Had Weston made arrangements to go back to

13 Murdock's apartment in Washington?

14 A. That is what I believed, yes.

15 Q. Did you hear them make such arrangements?

16 A. Yes.

17 Q. What were you going to do after you left the drug

18 store?

19 A. I was going to ride back home with him.

20 Q. You say ride back home. Did you live in the

21 apartment in Washington with the other two men?

22 A. (Indicating positive.)

23 Q. When was the first time Weston suggested you give

1 him the pills or the pill box?

2 A. As soon as we walked out the door he wanted to

3 see them or wanted to hold the bag or, Let me carry the bag,

4 something like this. I didn't know what he wanted, you

5 know.

6 Q. You felt suspicious about that?

7 A. I told him no.

8 Q. You said no. Why didn't you trust him?

9 A. I didn't know what he wanted. I said, What do

10 you want to hold the bag for.

11 Q. Was it because you didn't trust him?

12 A. It was because he didn't have any reason to want,

13 you know, medication.

14 Q. Apparently he had some reason. He asked to look at

15 it. Did you suspect he was working for the police at that

16 time?

17 A. No. I don't think so.

18 Q. You don't think so?

19 A. I didn't care if he was or not.

20 Q. I know. I'm asking you if you suspected whether

21 or not he was working for the police? Did you smell rat?

22 A. No.

23 Q. So, would you tell the ladies and gentlemen of the

ARGUMENT ON INSTRUCTION "I"

1 MR. TRAVOSTINO: I would have argued in the
2 alternative.
3 THE COURT: I don't think you will. You have a not
4 guilty plea, he did not commit the act. You also want at the
5 same time to argue he did commit the act but he was
6 entrapped. Is that your position?
7 MR. TRAVOSTINO: That is correct. Not my position.
8 My position is he did not commit the act, however, if the
9 Jury believes he did then the defense of entrapment.
10 THE COURT: The Court is going to refuse H.
11 MR. TRAVOSTINO: I would ask my exception be noted
12 for the record.
13 THE COURT: Any objection to I?
14 MR. GRAHAM: Yes, sir. I would object to I. I
15 think Instruction Number I, Your Honor, is inconsistent with
16 either theory of the case, either the Commonwealth or the
17 Defendant's. Number 1, it assumes there was a distribution,
18 when, in fact, the Commonwealth does not even accuse the
19 Defendant of having distributed. Certainly the evidence before
20 the Court and Jury, namely, that the street value of these
21 pills is approximately eighteen to twenty dollars apiece,
22 that Mr. Weston, if the Jury believes the Government's case,
23 paid Mr. Schindel a hundred dollars for what Mr. Weston

1 expected to be at least a portion of the prescription.
2 Neither theory of the case, Your Honor, supports the
3 instruction.
4 THE COURT: The Court is going to refuse I. He is
5 not charged with distribution; he is charged with possession
6 with intent to distribute. So, the Court is going to refuse
7 I.
8 Any objection to 7?
9 MR. TRAVOSTINO: No, Your Honor.
10 THE COURT: Any objection to 8?
11 MR. TRAVOSTINO: No objection.
12 (The Jury returned to the Courtroom, and the
13 following was had within the hearing of the Jury.)
14 THE COURT: Ladies and gentlemen of the Jury, all
15 the facts and evidence are now before you. The Court will
16 read you the instructions which are the law of the case to
17 be applied to the facts and the evidence you've heard. These
18 instructions will go into the Jury Room with you and be
19 available to you during the course of your deliberations.
20 The Court would ask members of the Jury not single out one
21 instruction and give it any more weight than another
22 instruction but to consider the instructions as a whole.
23 The Court instructs the Jury the Jury are the sole

INSTRUCTION NO. I

If you believe from the evidence that the defendant distributed dilaudid only as an accommodation to Joseph Weston and not with intent to profit thereby nor to induce the recipient to use or become addicted to or dependent upon such drug, then you shall find the defendant guilty and fix his punishment at a maximum of one (1) year in jail or a One Thousand Dollar fine.

Virginia Jury Instructions, Section 114.53

1 course -- what the initial discussion between Mr. Weston and
2 Mr. Schindel was. Apparently there was some discussion of
3 a loan. Mr. Schindel asked Mr. Weston whether or not he
4 would be willing to lend him a hundred dollars. That seems
5 inconsistent in that Mr. Weston's stated purpose in
6 approaching Mr. Schindel was to ask him for drugs. In any
7 event, according to the perhaps unrebutted testimony, Mr.
8 Weston says I don't have the money to lend you but I've got
9 to go to Court and I may get back to you in a few minutes.
10 Mr. Schindel, according to Mr. Weston, says hurry up.
11 During that initial conversation Mr. Weston likewise
12 testified he was told by Mr. Schindel Mr. Schindel could get
13 some dilaudid, that Mr. Schindel had a doctor in the
14 Courthouse who happened to be there that day who could
15 obtain dilaudid from him, that he needed some money to get a
16 prescription in order to pay the doctor in return for the
17 prescription. Okay.
18 Now, the contradiction in testimony and I submit
19 a crucial contradiction. If you recall according to Mr.
20 Schindel's testimony no mention was ever made of dilaudid
21 throughout the entire time Weston and Schindel were together,
22 not even when they were sitting out in front of the drug
23 store getting ready to go in when Mr. Schindel was, as he

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1 said, waving the prescription around. He thought perhaps Mr.
2 Weston might have looked at the prescription but then he
3 contradicted himself again and said, No, There was no way
4 for Weston to know I was getting dilaudid. This was after
5 Weston had talked to his attorney; he talked to the
6 Commonwealth attorney, you recall, and within ten minutes of
7 the initial conversation went up to Guy Morgan's office and
8 what did he tell Guy Morgan. He said, Listen, I've gone to
9 Schindel. Schindel has said he can get some dilaudid.
10 Dilaudid was mentioned in Guy Morgan's office within a
11 half an hour of the time these two men spoke together.
12 How possibly could Mr. Weston have known Mr. Schindel was
13 going to get dilaudid unless Mr. Schindel told him he was
14 going to get dilaudid. But was Mr. Schindel quivering on
15 that point. Was he unsure. No. He said absolutely not,
16 there was no way Mr. Weston knew he was going to get dilaudid
17 because there was no reason for Mr. Weston to know he was
18 going to get dilaudid because Mr. Schindel was merely
19 borrowing a hundred dollars from him on the spot. This is
20 important.
21 We're dealing with a state of mind type of case,
22 a case where we have to determine what the state of mind of
23 the Defendant was at the time the crime was allegedly committed.

1 Obviously, none of us can look into the mind of the
2 Defendant. That is something we'll never be able to do.
3 So, we have to judge what is in the Defendant's mind by
4 objective conduct that he exhibits, what he does, what he
5 says and from that we try to deduce what is going on inside
6 his mind. It's the same way in any type of a crime when the
7 state of mind is crucial and that I submit is most types of
8 crime.
9 So, now we've got an unbelievable earth
10 shattering coincidence. Mr. Weston, whom Mr. Schindel claims
11 is creating a prosecution so he can be a white knight and
12 ride in and solve the crime and get himself a more lenient
13 sentence, who is based on all that wild speculation, who has
14 concluded somehow maybe he is psychic, that Mr. Schindel is
15 available to dilaudid so he goes to Investigator Morgan and
16 tells the story -- I don't have to go into it. They went
17 back and forth. Guy Morgan searched him. Morgan gave him
18 six marked bills. Weston said all right, I'm going to go
19 do this, I'll go down and give Mr. Schindel the money in the
20 hallway and he tells Investigator Morgan this in advance.
21 Mr. Weston knows all this at the time he goes up to talk to
22 Guy Morgan. He knows money is going to change hands. He
23 knows Mr. Schindel is going to go to the drug store and get a

1 prescription. He knows enough to tell Guy Morgan which
2 possible drug store he is going to. He knows enough to tell
3 Guy Morgan to follow them, that he is supposed to get some or
4 allthe pills in return for the hundred dollars. He knows
5 all these things but according to Mr. Schindel he knows them
6 all for reasons Mr. Schindel can't explain and since Mr.
7 Schindel is the only one who could possibly tell Mr. Weston
8 what was going on where is the explanation of what happened.
9 I submit the only explanation is Mr. Schindel is not telling
10 the truth. He's not telling the truth as to why he said he
11 needed a hundred dollars. He's not telling the truth as to
12 under what circumstances he took the hundred dollars from
13 Mr. Weston and he's not telling the truth about what Mr.
14 Weston knew of what was going to be done with the hundred
15 dollars.
16 Then there comes a time when Mr. Weston actually
17 transmits the bills to Mr. Schindel and then through a delay
18 of a period of time Mr. Schindel goes to Dr. Salama and Dr.
19 Salama takes them and they go outside, at which point
20 Investigator Morgan, who observed Weston pass the money to
21 Schindel, follows Dr. Salama and Mr. Schindel out to Dr.
22 Salama's car. All right.
23 Here we have a man who Mr. Schindel is apparently

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA	)	Indictment - Possession of a
	)	
vs.	)	controlled drug with intent to
	)	
WINFIELD SCHINDELL	)	distribute Cr. No. 25510

This 17th day of March, 1978, came the Commonwealth, by her Attorney, and the Defendant, WINFIELD SCHINDEL, who stands convicted of a felony, to-wit: possession of a controlled drug with intent to distribute, being confined in jail was brought into Court and put to the Bar of the Court in the custody of a Deputy Sheriff; also appeared Daniel Travostino, Counsel for the Defendant.

Thereupon, the Court Reporter was sworn.

Whereupon, the Probation Officer of this Court, to whom this case had been previously referred for investigation, appeared in open Court with a written report, copies of which had previously been furnished to Counsel for the Defendant, Attorney for the Commonwealth, and the Court. Counsel for the Defendant then advised the Court that he had discussed the report with the defendant and the defendant was fully advised of the contents thereof.

Thereupon, the accused and his Counsel were given the right to cross-examine the Probation Officer as to any matter contained in said report, and to present any additional facts bearing upon

the matter as he desired to present. The report of the Probation Officer is hereby filed and made a part of the record of this case.

Thereupon, it was demanded of him WINFIELD SCHINDEL if anything he knew or had to say why the Court should not proceed to pass sentence and judgment upon him, and nothing being offered or alleged in delay of judgment, it is ADJUDGED and ORDERED the defendant serve five (5) years in the Penitentiary House of this Commonwealth, at hard labor, in accordance with the verdict rendered by the jury in this case on January 3, 1978; said sentence or portion of said sentence to run concurrently with the Federal sentence.

The Court proceeded to advise the Defendant of his right to appeal from the sentence heretofore imposed, including the right to have an attorney appointed for him and to have the attorney's fees, costs and expenses in connection with, paid for him in the event he is financially unable to pay the same.

Daniel Travostino, an able and experienced Attorney at Law practicing before this Court is hereby appointed to advise the Defendant on any matters pertaining to the appeal of this case.

The fee of the Court Reporter who recorded the evidence and incidents of trial in this case is hereby assessed as costs in this case, as provided by Sec. 19.2-165 of the 1950 Code of Virginia, as amended.

Daniel Travostino, Attorney who was heretofore appointed to represent the Defendant in this case is hereby allowed a fee

of $ 200.00 .

The Court certifies that the Defendant was present at all stages of this trial.

And the Defendant is remanded to jail.

JUDGE

DOB: 8-17-51
Jail Credit: 109 days

ASSIGNMENTS OF ERROR

1. The trial Court was in error in not striking hearsay statements of Officer Guy Morgan regarding conversations between Officer Morgan and James Weston, found in the transcript on page 73.

2. The trial Court was in error in refusing appellant's Instruction "I."